

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**APR 05 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

ROSARIO JUAN LOPEZ; MARIA  
CASTANEDA PEDRO-LOPEZ;  
ZACARIAS SEBASTIAN-JIMENES,

Petitioners,

v.

ALBERTO R. GONZALES,  
Attorney General,

Respondent.

No. 04-72586

Agency Nos. A70-170-079  
A78-962-723  
A79-167-438

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted January 23, 2006  
Seattle, Washington

Before: RAWLINSON and CLIFTON, Circuit Judges, and MARSHALL<sup>\*\*</sup>, Senior  
District Judge.

Rosario Lopez and her children Maria Pedro-Lopez and Zacarias Sebastian-  
Jimenes file a petition for review challenging the denial of their asylum claims.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable Consuelo B. Marshall, Senior United States District  
Judge for the Central District of California, sitting by designation.

Because the IJ committed no legal error with respect to those issues over which we have jurisdiction, and because we lack jurisdiction to consider the remaining elements of the IJ's decision, we deny in part and dismiss in part.

The IJ denied the petitioners' asylum claims because they failed to file their application within one year of arriving in the United States, as required by 8 U.S.C. § 1158(a)(2)(B). The petitioners argue, however, that they should be exempted from this requirement under the "changed or extraordinary circumstances" exception. *See* 8 U.S.C. § 1158(a)(2)(D).

We lack jurisdiction to consider whether the IJ erred in evaluating the petitioners' factual circumstances and concluding that the petitioners were ineligible for relief under the exception. *See Ramadan v. Gonzales*, 427 F.3d 1218, 1221-22 (9th Cir. 2005). We do have jurisdiction over non-discretionary legal issues relating to the IJ's factual determination, including whether the IJ contravened the petitioners' due process rights or altogether failed to consider their changed circumstances argument. *See Sagaydak v. Gonzales*, 405 F.3d 1035, 1039-40 (9th Cir. 2005). We conclude, though, that the IJ did not commit a due process or other legal error in his denial of the petitioners' asylum claims.

We also lack jurisdiction to determine whether Maria's derivative claim, considered alone, was not time-barred. Since the petitioners neither raised nor

discussed this issue before the IJ or BIA, they failed to exhaust available administrative remedies as to that issue and we cannot now consider it upon appeal. *See Barron v. Ashcroft*, 358 F.3d 674, 676-78 (9th Cir. 2004); *Ladha v. INS*, 215 F.3d 889, 901 n.13 (9th Cir. 2000)

**PETITION DENIED IN PART AND DISMISSED IN PART.**